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Supreme Court of the United States

OCTOBER TERM, 1991

PAMELA WITHROW,

Petitioner,

vs.

ROBERT ALLEN WILLIAMS, JR.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF AMICI CURIAE OF THE POLICE FOUNDATION ET AL. IN SUPPORT OF THE RESPONDENT

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QUESTION PRESENTED

This brief will address the following question:

Whether the rule of Stone v. Powell, 428 U.S. 465 (1976), should be extended to bar a federal court, when considering a petition for writ of habeas corpus from a state prisoner, from entertaining a claim that alleges that the introduction at trial of unwarned custodial statements violated Miranda v. Arizona, 384 U.S. 436 (1966).

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BRIEF AMICI CURIAE OF THE POLICE FOUNDATION ET AL. IN SUPPORT OF THE RESPONDENT

The police organizations, law enforcement officials, and former state and federal prosecutors listed on the

pages following the front cover submit this brief as amici curiae, pursuant to Rule 37 of the Court's rules, to assist the Court in determining whether the rule of Stone v. Powell, 428 U.S. 465 (1976), should be extended to apply to claims alleging that the admission at trial of unwarned custodial statements violated Miranda v. Arizona, 384 U.S. 436 (1966).[1] For the reasons stated herein, the Court should not extend the Stone rule to these claims.

STATEMENT OF INTEREST OF AMICI CURIAE

This brief is filed on the behalf of four police organizations, and fifty former state and federal prosecutors.

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[1] Counsel for both petitioner and respondent have consented to the filing of this brief.

The Police Foundation was established in 1970 by The Ford Foundation to improve policing and reduce crime in America through research, technical assistance, and communication. The Foundation played a pivotal role in the development of community policing, paved the way for the advancement of women in policing, and is breaking new ground with its comparative studies of large urban police departments. Foundation research on the use of deadly force was cited at length in Tennessee v. Garner, 471 U.S. 1 (1985). The Foundation provides technical assistance and training to government at all levels, as well as to private institutions concerned with public safety. In recent years, the Foundation has developed model programs designed to help municipalities improve relations between the police and

the community, adopt policies that foster cultural sensitivity, and reduce the use of excessive force by police.

The Police Executive Research Forum (PERF) is a national organization of law enforcement chief executives committed to promoting professionalism and advancing policing practices through research, experimentation, strong leadership and national debate. PERF members collectively serve more than 35 percent of the citizens in the United States.

The International Union of Police Associations (I.U.P.A.) is the AFL-CIO police union. The I.U.P.A. represents over 40,000 street-level police officers throughout the country in more than 200 law enforcement agencies.

The National Black Police Association (NBPA) is a nationwide organiza-

tion of Black police associations dedicated to the promotion of justice, fairness, and effectiveness in law enforcement. It has over 130 member associations representing more than 35,000 individual members, and has previously filed briefs in the Court on matters of significant importance to law enforcement. Cf. Tennessee v. Garner, 471 U.S. 1 (1985).

The fifty former prosecutors reflect an extraordinary breadth of experience in the trenches of our criminal justice system, and in the litigation of Fifth Amendment self-incrimination claims. Some have represented the interests of the United States in literally hundreds of hearings concerning the admission of custodial statements; others have sought the admission of such statements in state prosecutions in an equally large number of

cases. As a group, they possess a uniquely informed perspective on the importance of the enforcement of Miranda v. Arizona, 384 U.S. 436 (1966), in the state and federal courts.

Together, these organizations and individuals join their voices in urging the Court to resist the arguments of the State of Michigan and its amici, and to reject the extension of Stone to custodial statement claims.

SUMMARY OF ARGUMENT

Despite initial opposition, enforcement of Miranda v. Arizona, 384 U.S. 436 (1966), and its progeny in the state courts and the federal habeas corpus courts now enjoys widespread support in the law enforcement community. Miranda's enforcement has enhanced the reliability and integrity of the fact-finding process.

It must continue to be enforced in both the state courts and federal habeas corpus courts to prevent the unconstitutional imprisonment of citizens due to unreliable and coerced confessions.

The law enforcement community has seen the enforcement of Miranda and its progeny lead to an increased professionalism within police and sheriff's departments throughout the country. Miranda's bright-line rules have proven relatively easy to follow, have not hindered the process of securing voluntary custodial statements from suspects, and have sensitized police to Fifth Amendment commands. Prosecutors also find that issues of the admissibility of custodial statements have been simplified, and that juries have more confidence in statements secured after Miranda warnings.

Amici feel strongly that extending the rule of Stone v. Powell, 428 U.S. 436 (1976), to bar review of claims based upon Miranda and its progeny in federal habeas proceedings would send a disturbing message to the country and the law enforcement community, and would undermine the credibility of our criminal justice system. Many Americans view Miranda as a commitment to prevent intolerable police practices, and would view a bar to the review of Miranda claims in federal habeas proceedings as an abandonment of that commitment. The law enforcement community has no interest in seeing convictions based upon harmful Miranda violations go without legal remedy. In those instances where the state courts fail to provide such a remedy, federal habeas review should remain available.

ARGUMENT

I.

THERE IS SUBSTANTIAL SUPPORT IN THE LAW ENFORCEMENT COMMUNITY FOR MIRANDA AND ITS CONTINUED ENFORCEMENT IN HABEAS PROCEEDINGS BECAUSE IT PROTECTS THE RELIABILITY AND INTEGRITY OF THE TRIAL WITHOUT HARMING LEGITIMATE LAW ENFORCEMENT OBJECTIVES

A. Miranda's Purpose Was To Enhance The Reliability And Integrity Of The Fact-Finding Process

1. This Was The Purpose Of Miranda

For years prior to the decision in Miranda v. Arizona, 384 U.S. 436 (1966), the Court was concerned about the influence of coerced confessions upon the reliability and integrity of criminal trials. Miranda was fully in keeping with this longstanding concern. Thus, the Court's purpose in handing down Miranda was to protect the reliability and integ-

rity of the fact-finding process in criminal trials. As a later decision recognized, "the basis for [the Miranda] decision was the need to protect the fairness of the trial itself."[2]

In protecting the fairness of the trial, Miranda provides "important * * * safeguards against the use of unreliable statements at trial * * * ."[3] Thus, recognizing that the combination of custody and interrogation "contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely,"[4] the Court held that the Fifth Amendment's privilege

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2 Schneckloth v. Bustamonte, 412 U.S. 218, 240 (1973) (citing Miranda, 384 U.S. at 466).

3 Johnson v. New Jersey, 384 U.S. 719, 730 (1966).

4 Miranda, 384 U.S. at 467.

against self-incrimination applies to custodial interrogation conducted by the police.

The Court also concluded that in order to dispel the compulsion inherent in custodial questioning -- so that any statement secured from and used against a defendant is the product of his free will -- "protective devices" are needed.[5] In the absence of these protections, there is a "presumption of compulsion" that is "irrebuttable for purposes of the prosecution case in chief * * * ."[6]

The Court decided that the use by the prosecutor in his case in chief of such compelled statements would violate

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5 Id. at 458.

6 See Oregon v. Elstad, 470 U.S. 298, 307 (1985).

the Fifth Amendment privilege against self-incrimination, "the mainstay of our adversary system of criminal justice."[7] As the Court subsequently stated, coerced confessions not only deprive citizens charged with a crime of a central constitutional right, they also "may well be untrustworthy by their very nature."[8] Accordingly, when a state court considers an alleged Miranda violation in the first instance, and when a federal habeas court does so in post-conviction review, they are often considering a challenge to "the integrity of the factfinding process" of the state trial.[9]

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7 Johnson, 384 U.S. at 729.

8 See id.

9 See Brewer v. Williams, 430 U.S. 387, 414 (1977) (Powell, J., concurring).

2. The Enforcement Of Miranda Is Accomplishing This Purpose

Our experience as law enforcement officials and prosecutors convinces us that the enforcement of Miranda -- in the state courts, and where necessary in federal habeas proceedings -- has contributed substantially to effectuating the purpose behind Miranda, i.e., preventing convictions obtained through the use of compelled confessions. That Miranda's enforcement is having this positive effect has been widely recognized. As the Washington Post reported in June 1986:

> Supporters and opponents of the decision and subsequent modifications, agree that its enforcement has largely cured the problem the justices sought to overcome: lengthy and physically or psychologically brutal questioning by police used as a way to compel a suspect to confess to a crime.[10]

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10 See Nancy Lewis, 20 Years After Miranda, Police Say They've Learned to Live with Ruling;

(Footnote continued)

Moreover, the Special Committee on Criminal Justice in a Free Society, appointed by the American Bar Association's Criminal Justice Section and consisting of prosecutors, defense counsel, a police chief, law professors and a judge, concluded in November 1988, after (a) hearing testimony from police officers, prosecutors, defense attorneys and judges, (b) reviewing major criminal justice studies and (c) evaluating the result of a national telephone survey it commissioned, in which "over 800 defense lawyers, judges, prosecutors, and high ranking police administrators" were interviewed:

(Footnote 10 continued from previous page)
Early Outrage at Decision on Suspects' Rights Called "Overreaction", Wash. Post, June 13, 1986, (hereinafter "20 Years After"), at A4.

> Miranda has a very important symbolic value, reminding police officers of the limits of their authority over suspects. It has also helped to professionalize police departments and very likely to reduce the incidence of physically coerced confessions.[11]

As former FBI Section Chief Conrad V. Hassell has noted, state and federal court supervision of the interrogation process has had a dramatic and positive effect upon police agencies. "What Miranda did do, more than anything since the advent of the two-way radio in police cars, was to professionalize law enforcement."[12] He learned during his

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11 Special Committee on Criminal Justice in a Free Society of the American Bar Association Criminal Justice Section, Criminal Justice In Crisis (Nov. 1988) (hereinafter "ABA Special Committee Study"), at 2, 33-34.

12 Conrad V. Hassell, In Defense of Fairness: The Need for Miranda, The Police Chief, Dec. 1987, at 12.

many years of service at the Bureau that Miranda made police investigation

> more sophisticated. Forensic and behavioral sciences and the law of evidence were emphasized in police training academies. Law enforcement began the progression from skilled labor to a true profession, and much of the impetus for this massive reform came from the Miranda decision.[13]

This view is shared by local law enforcement officials as well. Former Boston Police Commissioner Francis Roache has noted that "Miranda made us more professional. It forced us to appreciate the Constitution. We now have great respect for people and we want to protect those rights."[14]

Moreover, our experience has taught us that the bright line rules of

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13 Id.

14 Police Chiefs Defend Miranda Against Meese Threats, Boston Globe, Feb. 5, 1987, at 25.

Miranda and its progeny have proven easy to follow. We wholeheartedly concur in the view of one prosecutor interviewed by the ABA Special Committee who stated that:

> Miranda * * * is a bright-line rule, easily understood, applied uniformly. We don't have any problem with it, and the police officers don't have any problem with it. [Miranda] is one of the great things you can have for a policeman. I have no problem with Miranda. * * * I think it has provided an appropriate level of warning to people who might not otherwise understand what their rights are.[15]

There is little question any longer that Miranda's enforcement has led to improvements, both within law enforcement agencies throughout the country, and in the reliability of the statements prosecutors present to juries when seeking convictions.

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15 ABA Special Committee Study, supra, at 30.

3. Federal Habeas Enforcement Of Miranda Is Vital To The Effectuation Of Miranda's Purpose

While Miranda and its progeny have had a significant and positive impact upon the law enforcement community's collection and use of statements, these cases must continue to be judicially enforced -- in both the state courts and federal habeas courts -- to prevent citizens from being unconstitutionally imprisoned because of unreliable and coerced confessions. Indeed, a brief survey of reported cases shows a significant number in which (a) the police have engaged in conduct that creates an irrebutable presumption of compulsion, (b) prosecutors have nevertheless introduced the resulting confessions

at trial, and (c) the state courts have upheld the ensuing convictions.[16]

In such cases, only the enforcement of Miranda in federal habeas corpus has secured the Fifth Amendment right that convictions not be brought about by unconstitutionally compelled confessions. Absent federal habeas corpus, this Court's resolve to end the use of confessions secured through compulsion would not have been effectuated. Since such cases continue to occur, federal habeas corpus review is necessary.

Collazo v. Estelle, 940 F.2d 411 (9th Cir. 1991) (en banc), cert. denied, 112 S. Ct. 870 (1992), illustrates how essential federal habeas courts have been

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[16] We report only some of the cases we discovered where relief has been granted during the past five years.

when state courts have failed to provide a remedy for even outrageous police misconduct in securing statements. Writing for the full court in Collazo, Judge Trott found brazen, illegal police conduct that the state courts had not remedied. He identified in some detail the many police violations:

> Here, Officer Destro took unfair advantage of [the compelling pressures that can weigh upon a person in custody]. At a point where the law required him to back off, he did not "scrupulously honor" Collazo's right to cut off questioning; he stepped on it.
>
> * * *
>
> In this regard, Officer Destro's immediate interrogation of Collazo in direct response to his request for a lawyer is a textbook violation of Edwards.
>
> * * *
>
> What Officer Destro did can only be seen as badgering Collazo in the precise manner that concerned the Edwards Court.
>
> * * *

> Officer Destro's words are an egregious violation of Miranda -- the essence of improper law enforcement behavior in response to the rules established in that * * * landmark case.[17]

The court concluded that the admission of the coerced statement was not harmless, and, unlike the state courts, ordered the State "to retry the petitioner without using his taped statement."[18]

Equally egregious conduct by prosecutors has also been dealt with by the federal courts after the state courts have refused to provide a remedy. For example, in Cervi v. Kemp, 855 F.2d 702 (11th Cir. 1988), cert. denied, 489 U.S. 1033 (1989), Cervi was arrested in Iowa, and held on a Georgia murder warrant.

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17 Collazo, 940 F.2d at 417, 418 (citing Edwards v. Arizona, 451 U.S. 477 (1981)).

18 Id. at 426.

After Cervi requested to speak with counsel before proceeding with the hearing, a magistrate continued the hearing until the following day to allow Cervi to consult with appointed counsel. When appointed counsel arrived as scheduled to interview Cervi the following morning, the Iowa prosecutor and Georgia prosecutor refused to allow the meeting until Georgia authorities commenced and completed their interrogation. Both prosecutors were aware of Cervi's request for counsel but both took affirmative steps to block the meeting.

After the state courts found no violation, the federal appeals court found a straightforward violation of Edwards v. Arizona, 451 U.S. 477 (1981). That court concluded:

> Under these facts, the Edwards violation is clear. Cervi unequivocally invoked his right to counsel at the initial proceeding before the magistrate. He was in uninterrupted custody from that time until after he gave his incriminating statement. He did not in any way initiate the conversation that led to the statement. The Georgia authorities knew of Cervi's request for counsel prior to the time that he made his confession.[19]

Collazo and Cervi do not stand as solitary exceptions to otherwise full enforcement of Miranda by the state courts. Other obvious and harmful violations of Miranda and its progeny have frequently been remedied in federal habeas corpus after state courts have failed to provide relief. See, e.g., Christopher v. Florida, 824 F.2d 836 (11th Cir. 1987) (police repeatedly refused to honor asser-

[19] Cervi, 855 F.2d at 706.

tions of right to silence), cert. denied, 484 U.S. 1077 (1988); Smith v. Endell, 860 F.2d 1528 (9th Cir. 1988) (troopers ignored unambiguous requests of suspect for counsel), cert. denied, 111 S. Ct. 510 (1990); Desire v. Attorney General of California, 1992 U.S. App. LEXIS 15503 (9th Cir. July 10, 1992) (suspect asserted right to counsel and police told counsel client would not be interrogated; police then interrogated suspect, barred attorney from seeing client and prohibited suspect from calling attorney).[20]

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[20] Among other cases where relief from unconstitutional violations of Miranda and its progeny has been granted only in federal habeas corpus are Jacobs v. Singletary, 952 F.2d 1282 (11th Cir. 1992); Kordenbrock v. Scroggy, 919 F.2d 1091 (6th Cir. 1990) (en banc), cert. denied, 111 S. Ct. 1608 (1991); Robinson v. Borg, 918 F.2d 1387 (9th Cir. 1990), cert. denied, 112 S. Ct. 198 (1991); Towne v. Dugger, 899 F.2d 1104 (11th Cir.), cert. denied, 111 S. Ct. 536 (1990); United States ex rel. Espinoza v. Fairman, 813 F.2d 117 (7th Cir.), cert. denied, 483 U.S. 1010 (1987).

These cases plainly show that federal habeas corpus has been vital to the enforcement of Miranda rights and must remain available in the future.

B. Miranda's Continued Enforcement In Federal Habeas Will Not Harm Legitimate Law Enforcement Objectives

There is no question that when Miranda was first announced the law enforcement community responded overwhelmingly in a negative way. "The initial reaction of police and police officials was that it was the end of justice. * * * I'm sure it was overreaction, but we thought it was ludicrous, ridiculous, [and] that police would be handcuffed," recalled Montgomery County, Maryland, Police Chief Bernard D. Crooke.[21]

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[21] 20 Years After, supra, at A-4.

Yet in the subsequent twenty-five years, our view has changed, and changed dramatically. Professor LaFave speaks for many of us in saying "the Miranda solution hardly looks like an instance of overkill or an extremely liberal reaction to the problem."[22] Quoting former Deputy Attorney General Saltzburg in part, he continues:

> "Miranda is more of a compromise than most critics would care to admit," for it lies halfway between doing nothing to protect the fifth amendment privilege at the police station and protecting it fully by ruling "that before interrogation, a suspect must be warned of his rights by a magistrate and asked whether he wishes to waive them."[23]

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22 Wayne R. LaFave, Constitutional Rules for Police: A Matter of Style, 41 Syracuse L. Rev. 849, 858 (1990).

23 Id. (quoting Stephen Saltzburg, Miranda v. Arizona Revisited: Constitutional Law or Judicial Fiat, 26 Washburn L.J. 1, 21, 23 (1986)).

It is little wonder then that former Assistant United States Attorney Gerald M. Caplan, a vocal critic of the decision, has concluded that Miranda "has fallen into the mainstream and has been accommodated."[24]

Moreover, we now recognize that Miranda's dictates have rarely hindered the pursuit of truth in the courtroom. Police Chief Jim Davis of Portland, Oregon speaks for many in saying "we've had no problems with the Miranda ruling. We haven't found it to be a hamper or a hindrance in any way."[25]

This view is shared by others who have given the matter considered re-

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24 20 Years After, supra, at A-4.

25 Pete Yost, Police Chiefs Leader Supports Rollback of Miranda Ruling, Others Disagree, AP, Jan. 23, 1987 available in LEXIS, Nexis Library, AP File.

view. Professor Uviller, a long-time friend of law enforcement, concluded, after returning to the streets with the police during a several-month study, that "[w]hile Miranda may inhibit some exploitations of custody, it clearly leaves the police as free as ever to try every psychological ploy in the battle of wits to induce the suspect to furnish the evidence for his own conviction."[26] And the ABA Special Committee's 1988 Study reached the same conclusion:

> A very strong majority of those surveyed -- prosecutors, judges, and police officers -- agree that compliance with Miranda does not present serious problems for law enforcement. This conclusion taken together with earlier empirical studies assessing the impact of Miranda is

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26 H. Richard Uviller, Tempered Zeal: A Columbia Law Professor's Year on the Streets with the New York City Police, (Contemporary 1988) at 212.

> a strong repudiation of the claim that law enforcement would be greatly improved if Miranda was repealed or overruled.[27]

Indeed, many of us know from our years in the trenches that Miranda has actually assisted prosecutors, by aiding their efforts to show that statements taken from suspects were secured fairly and were not the product of heavy-handed measures. Problems of proof, as well as occasional doubts about whether officers were being candid and truthful in their description of interrogations, lessened with the advent of written advice cards and waiver forms that often included the suspect's signature. Rarely do prosecutors have to contend anymore with the problems of yesteryear. We completely

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27 ABA Special Committee Study, supra, at 28 (citations omitted).

agree with the statement of one prosecutor to the ABA Special Committee that "juries attach greater credibility to confessions that are obtained after Miranda warnings."[28]

Although some in law enforcement wish to see Miranda weakened or even reversed, recent criticism has come largely from politicians, not from prosecutors and police.[29] Surely, only a small minority want to see Miranda enforced less effec-

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28 ABA Special Committee Study, supra, at 29 (discussing prosecutor's views quoted at 29-30 of that study).

29 As Professor LaFave has observed:

"The Miranda bright line rules made it relatively easy for well-intentioned police to comply. This is why one seldom hears complaints about Miranda from police; these days, Miranda-bashing is largely confined to those trying to make political hay."

LaFave, supra, at 856 (footnote omitted).

tively, or continue to seek its outright demise.

Like most law enforcement officials, former Attorney General Griffin Bell supports the continued retention and enforcement of Miranda.[30] So do former Houston Police Chief, and current Police Commissioner in New York, Lee Brown,[31] and

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30 An ABA Journal article reported:

"As a practical matter, Miranda has been serving us well," says Griffin Bell, an Atlanta lawyer who was attorney general under President Jimmy Carter. "It protects our rights under the Fifth and Sixth Amendments, and I don't know of any better alternative. It is part of the American way of life now. Even the police don't want to do away with it. And I talked to quite a number of them [while at the Justice Department]."

Jonathan I.Z. Agronsky, Meese v. Miranda: The Final Countdown, A.B.A.J., Nov. 1, 1987, at 86, 88.

31 Mr. Brown does not see a need to lessen the enforcement of Miranda because he doesn't "see any detrimental impact" [from the decision]. Tamar Jacoby, Fighting Crime by the Rules: Why Cops Like Miranda, Newsweek, July 18, 1987, at 53.

former Newark Police Director Hubert Williams.[32] Their views are shared by prosecutors throughout the country.

It is little wonder, then, that those who have labored long to enforce our nation's Constitution and laws in an even-handed manner urge retention of the status quo, and that Miranda continue to be enforced fully. For example, then-United States Attorney for the Southern District of New York, Rudolph W. Guiliani, has supported Miranda and has cautioned, "I generally don't think we should change things unless there's a terribly good reason to do [so]. There's real benefit

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[32] "Officers want respect. • • • We've gotten away from force and coercion. Nor do we want to be accused of that." Why Cops Like Miranda, supra, at 53. Miranda has made it harder to level those charges.

in keeping things stable."[33] The Court would certainly be changing things without "a terribly good reason to do [so]" if, after all these years of the availability of federal habeas corpus review, it accedes to the view that Miranda is deserving of lesser protection.

II.

ENDING THE ENFORCEMENT OF MIRANDA IN FEDERAL HABEAS CORPUS WOULD SEND A DISTURBING MESSAGE, AND WOULD UNDERMINE THE CREDIBILITY OF OUR CRIMINAL JUSTICE SYSTEM

A decision declaring that Miranda rights can no longer be enforced in federal habeas proceedings would send a disturbing message to the public and to law enforcement, by guaranteeing that an unacceptable number of cases based upon

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[33] Burt Solomon, Meese Sets Ambitious Agenda That Challenges Fundamental Legal Beliefs, 17 Nat'l J. 2640 (Nov. 23, 1985).

harmful Fifth Amendment violations will go without any remedy.

A. The Abandonment Of Federal Habeas Enforcement Of Miranda Would Understandably Be Viewed As A Serious Blow To Liberty And Would Erode The Public's Confidence In Police And The Courts

For many Americans, Miranda has become a uniquely important symbol of freedom. Most people view Miranda as an emblem of the Court's forthright commitment to ensuring that "third degree" police practice would end, once and for all.[34]

A retreat in the Court's commitment to Miranda's enforcement would engen-

[34] Indeed, not long after the Court announced it would review this case, a newspaper in rural south Georgia published an editorial which alerted its readers that this case "could alter a landmark ruling," and urged the Court to retain the status quo and "uphold the Miranda Rule as a fair and reasonable criminal case procedure." Miranda Rule Is Safeguard, Waycross Journal-Herald, May 9, 1992, at 3.

der justifiable alarm. As many of our cities simmer, and as distrust of the police is tragically on the rise, a decision constraining the federal courts' power to remedy even blatant disregard of Miranda would understandably be recognized by many as a serious blow to liberty.

Former FBI Section Chief Hassell does not overstate the case when he says that "[i]t is still true that the quality of a society can be judged on how well it treats the least of its citizens. If we abandon Miranda, we will fail this test."[35] Judicial surgery removing Miranda from federal habeas jurisdiction will surely be viewed as abandonment of the Court's assurance that coercive police methods will not be countenanced,

[35] Hassell, supra, at 12.

Moreover, the ABA Special Committee was correct when it concluded that a lessening of the commitment to Miranda would send a disturbing message to the law enforcement community itself:

> Although it does little to impede the police in their investigations, Miranda has a very important symbolic value, reminding police officers of the limits of their authority over suspects.[36]

In our democratic society, it is essential that we never lose sight of the need for the enforcement of the Constitution with respect to police interrogation and confessions -- by both state and federal habeas courts. "Miranda correctly recognizes that the mere coincidence of custody and interrogation 'contains inherently compelling pressures which work to

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[36] ABA Special Committee Study, supra, at 33.

undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely.'"[37] As Professor Uviller eloquently stated:

> The situation presents too easy and tempting an opportunity for the natural affinity of interrogation and torture to reassert itself in some form, however subtle. The notorious police appetite for a confession sometimes -- not invariably, but sometimes -- leads to oppressive exploitation of an inherently unequal situation.[38]

B. Our Criminal Justice System Would Lose Credibility If Serious Violations Of Miranda Could Not Be Remedied

If the ability of the federal courts to employ Miranda to overturn unconstitutional convictions resulting from

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[37] LaFave, supra, at 858, quoting Miranda, supra, 384 U.S. at 467.

[38] Uviller, supra, at 193.

coerced confessions is eliminated, the bright-line rules of Miranda will no longer be enforceable in all courts. Instead, the focus of federal habeas litigation concerning confessions will be the voluntariness test. Yet, under that test, the reliability and integrity of our criminal justice system will suffer, because, as Professor LaFave has pointed out:

> If we learned anything from the pre-Miranda exclusive reliance upon the voluntariness test, it was that a confession standard dependent upon a swearing contest between the police and defendant as to what occurred behind closed doors could not be relied upon to prevent police lawlessness.[39]

One result of a decision stripping Miranda claims from federal habeas courts would therefore be that there would

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[39] LaFave, supra, at 859 (citation omitted).

be people unconstitutionally convicted on the basis of tainted confessions who would remain unable to secure any judicial remedy at all. An example might be the case of William Alvin Smith (a/k/a "Noodle"), a retarded defendant who was convicted and sentenced to death largely on the basis of a confession he signed after hours of incommunicado interrogation.[40] Smith would have been able to understand his rights, if at all, only if the police had very slowly and carefully explained each right. Because the record failed to show that the police had explained his rights slowly enough so that Smith could understand them, the federal habeas corpus court held that the prosecution had not

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[40] See Smith v. Kemp, 664 F. Supp. 500 (M.D. Ga. 1987), aff'd, 887 F.2d 1407 (11th Cir. 1989) (en banc).

met its burden of showing a knowing and intelligent waiver of his Miranda rights. The court also concluded that the admission of the statement was harmful as to the jury's decision to impose the death sentence.[41] Under a less clearly defined standard, Smith might have secured no relief at all.

The integrity, as well as the reliability, of our criminal justice system would be tarnished by effectively telling the William Alvin Smiths of this country: "yes, your statement was introduced at trial in violation of Miranda, but you will be convicted -- or even executed -- because the state courts made a mistake and failed to grant you a new trial, and those are the only courts we

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41 Smith, 664 F. Supp. at 506.

will allow to consider your claim." Where such serious errors are not remedied in the state courts, the federal courts must remain free, in habeas proceedings, to grant relief.

Moreover, going back to the vague and undefinable "voluntariness" standard would make it more difficult to defend, in the federal courts, the admissibility of properly obtained statements. For these reasons, we urge the Court to preserve the status quo.

CONCLUSION

The Court should not extend the rule of Stone v. Powell, 428 U.S. 465 (1976), to bar a federal court, when considering a petition for a writ of habeas corpus from a state prisoner, from entertaining a claim that the introduction at

trial of custodial statements violated Miranda v. Arizona, 384 U.S. 436 (1966).

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